

REMARKS

Applicants request reconsideration of this application in view of the present Amendment.

Claim Objections

The amendments to claims 1 and 19 are believed to overcome the claim objections.

35 U.S.C. § 101

Claims 19-36 are rejected under 35 U.S.C. § 101 because “[c]laim 19 recites a ‘broker in communication.’ The broker is a human being.” The Applicants traverse this rejection.

In claim 19, the broker is in communication with the holding entities and the bidding entities for negotiating the supply of the holding entities. Claim 19 is simply reciting a system for service allocation of which one element is a broker. The “Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility” published in the OG Notices on 22 November 2005 states that:

It is immaterial whether the process may be performed by some or all steps that are carried out by a human. Claims are not directed to non-statutory processes merely because some or all the steps therein can also be carried out in or with the aid of a human or because it may be necessary for one performing the processes to do some or all of the process steps. The inclusion in a patent of a process that may be performed by a person is not fatal to patentability. *Alco Standard Corp. v. Tennessee Valley Authority*, 808 F.2d 1490, 1496, 1 USPQ2d 1337, 1341 (Fed. Cir. 1987) (citing *Diehr*, 450 U.S. at 175); see e.g. *Smith & Nephew, Inc. v. Ethicon, Inc.*, 276 F.3d 1304, 61 USPQ2d 1065 (Fed. Cir. 2001) (method claim where all the steps are carried out by a human). Therefore, USPTO personnel should no longer rely on the human step test to determine whether a claimed invention is directed to statutory subject matter.

This text from the Interim Guidelines is directed specifically to process claims, however, the same principle should apply to system claims, *i.e.*, simply because one element of a system could potentially be replaced by a human being does not make the claim non-statutory subject matter.

35 U.S.C. § 112

Claims 1 and 19 have been amended to recite “a fixed amount of utility,” which is believed to clarify the metes and bounds of the claims.

With respect to the requirement that claim 19 be corrected to include structural elements, to the extent this is understood, the claim clearly sets forth one or more holding entities, a plurality of bidding entities, and a broker.

With respect to the requirement that claim 19 be corrected to add agents to the claims because they are discussed in the specification, the description section of this patent application is clearly titled “Detailed Description of the Preferred Embodiment.” Thus, the description is not a description of the required features that must appear in the claims of the application. Further, the description is clear that “[i]n the preferred embodiment, the mechanism of the present invention is utilized through the use of agents. While the invention is described with respect to agents, the invention is not limited to the agent context.”

35 U.S.C. § 103(a)

Claims 1-36 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Delp et al. (5,996,013) in view of Johnson et al. (U.S. Pat. No. 6,005,925). The Applicants respectfully traverse these rejections.

As amended, claim 1 recites endowing one or more bidding entities with a fixed amount of utility and a requirement for an amount of said supply of services, wherein said fixed amount of utility represents less than, equal to, or more than the amount of said supply of services the entity could require to function at a particular time, said fixed amount of utility thereby also represents the possibility of failure due to a lack of resources. Neither Delp nor Johnson disclose or suggest this claim element.

Delp discloses a guaranteed resource allocation method and apparatus in which a resource allocator allocates resources between a number of arrival processes each having an assigned low threshold value. A dedicated resource pool and a shared resource pool are provided. The dedicated resource pool has a predetermined capacity that is greater than or equal

to the total of all the low threshold values. The dedicated resource pool provides guarantees of the resources while the shared pool provides statistical multiplexed resource use. A controller is connected to the resource allocator and is utilized for tracking resource use and providing the threshold values for the arrival processes.

In contrast to the elements of amended claim 1, Delp et al. teaches only the allocation of resources with the availability of a certain level of resources guaranteed. Delp allocates resources first from the dedicated resource pool and then, once the users portion of the dedicated pool is exhausted, from the shared resource pool assuming resources are available. Delp is capable of providing a guarantee because the dedicated resource pool contains enough resources to cover the sum of all the low threshold values for the arrival processes. Nowhere does Delp disclose or suggest that this low threshold value is a fixed amount of utility that represents less than, equal to, or more than the amount of said supply of services the entity could require to function at a particular time, said fixed amount of utility thereby also represents the possibility of failure due to a lack of resources and nowhere does Delp disclose or suggest that the low threshold values for a process could be zero. Rather, Delp “provides a floor threshold of guaranteed availability by the dedicated pool.” Col. 4, lines 47-49. If Delp was suggesting the possibility of a 0% threshold, *i.e.*, no guarantee of service from the dedicated pool, he would not have used the word “guarantee” or would have at least redefined the word within the context of his application to indicate such a departure from the normal meaning, which he did not do.

Rather, in Delp’s system, a portion of the resource is given (guaranteed) to an entity, whereas, in amended claim 1, the only value assigned to an entity is a fixed amount of utility, which represents less than, equal to, or more than the amount of said supply of services the entity could require to function at a particular time, said fixed amount of utility thereby also represents the possibility of failure due to a lack of resources. With respect to Delp’s use of an importance factor in some embodiments, Delp only applies this factor to usage from the shared resource pool. Delp’s importance factor is never applied to adjust or reallocate resources in the dedicated pool, and, hence, the importance factor never impacts the guaranteed level of resource an entity was initially guaranteed. Whereas, in amended claim 1, the fixed amount of utility may represent less than the amount of said supply of services the entity could require to function at a

particular time. The assignment of such a feature to Delp is only possible through the use of hind sight based upon the current disclosure.

Furthermore, amended claim 1 recites negotiating said supply of services of said holding entities, with each bidding entity bidding a selected amount of its said fixed amount of utility. Neither Delp nor Johnson disclose or suggest this claim element.

Delp teaches that the assigned low threshold value of resource is guaranteed to be available upon request. As Delp's low threshold level is available at any time upon demand, there is no negotiating said supply of services of said holding entities, with each bidding entity bidding a selected amount of its fixed amount of utility. Rather, this threshold level is available upon request with no negotiating involved.

Johnson does not overcome these shortcomings of Delp. Johnson teaches only a bidding system in which telecommunications carriers submit price bids for transmitting communications to at least one subscriber who makes routing decisions based on the available communications paths and the price bid for each of the communications. Thus, Johnson fails to teach or suggest endowing one or more bidding entities with a fixed amount of utility and a requirement for an amount of said supply of resources, wherein said fixed amount of utility represents less than, equal to, or more than the amount of said supply of services the entity could require to function at a particular time, said fixed amount of utility thereby also represents the possibility of failure due to a lack of resources.

Amended claim 1, thus, recites elements that are not disclosed or suggested by Delp et al. or Johnson et al. and, therefore, claim 1 cannot be made obvious by Delp et al. in view of Johnson et al. under 35 U.S.C. § 103(a). Dependent claims 2-18 contain features that further distinguish those claims from the disclosures of Delp et al. and Johnson et al. and, thus, also are not obvious over Delp et al. in view of Johnson et al. under 35 U.S.C. § 103(a).

Amended claim 19 similarly recites a plurality of bidding entities endowed with a fixed amount of utility and a requirement for an amount of said supply of services, wherein said fixed amount of utility represents less than, equal to, or more than the amount of said supply of services the entity could require to function at a particular time, said fixed amount of utility

thereby also represents the possibility of failure due to a lack of resources. As discussed above, neither Delp nor Johnson disclose these claim elements. Amended claim 19, thus, recites elements that are not disclosed or suggested by Delp or Johnson and, therefore, claim 19 cannot be made obvious by Delp in view of Johnson under 35 U.S.C. § 103(a). Dependent claims 20-36 contain features that further distinguish those claims from the disclosures of Delp and Johnson and, thus, also are not obvious over Delp in view of Johnson under 35 U.S.C. § 103(a).

Conclusion

Applicants respectfully submit that the amendments and remarks presented herein overcome the outstanding rejections and place the application in condition for allowance and allowance is requested. The Examiner is invited to call the undersigned or David Cochran (216-586-7029) if a telephone call would help resolve any remaining issues.

Respectfully submitted,

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